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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	2:14-CR-058-GMN-(CWH)
)	
WILLIAM JEFFREY RASKE,)	
)	
Defendant.)	

**UNITED STATES OF AMERICA'S MOTION TO CORRECT CLERICAL ERROR FOR
FAILING TO ATTACH THE FINAL ORDER OF FORFEITURE (ECF NO. 41) TO THE
JUDGMENT IN A CRIMINAL CASE (ECF NO. 40)**

The United States of America moves this Court to correct the clerical error of failing to attach the Final Order of Forfeiture (ECF No. 41) to the Judgment in a Criminal Case (ECF No. 40) ("Judgment") under Fed. R. Crim. P. 32.2(b)(4)(B) and 36.

The basis for attaching the Final Order of Forfeiture to a Judgment in a Criminal Case is Fed. R. Crim. P. 32.2(b)(4)(B) and 36, which provides that this Court attach and include the Final Order of Forfeiture in the Judgment. The United States requests this Court to attach the Final Order of Forfeiture to the Judgment.

...

1 This Motion is made and is based on the papers and pleadings on file herein and the attached
2 Memorandum of Points and Authorities.

3 DATED this 4th day of June, 2015.

4 Respectfully submitted,

5 DANIEL G. BOGDEN
6 United States Attorney

7 /s/ Michael A. Humphreys
8 MICHAEL A. HUMPHREYS
9 Assistant United States Attorney
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE FACTS

On June 1, 2015, this Court entered the Judgment in a Criminal Case (ECF No. 40) (“Judgment”). The Final Order of Forfeiture (ECF No. 41) was entered by this Court on June 1, 2015, but was not attached to the Judgment.

II. ARGUMENT

“The court **must** also include the forfeiture order, directly or by reference, in the judgment, but the court’s failure to do so may be corrected at any time under Rule 36.” Fed. R. Crim. P. 32.2(b)(4)(B) (emphasis added). “After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.” Fed. R. Crim. P. 36.

Federal Rule of Criminal Procedure 36 provides that after giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment. We have noted and now conclude that the omission of a forfeiture from the judgment ... can be remedied under Rule 36.

United States v. Zorrilla-Echevarria, 671 F.3d 1, 9-10 (1st Cir. 2011) (citations, quotation marks, and brackets omitted; ellipsis in the original). “The failure to include forfeiture in a judgment, that everyone intended to be included, constitutes a clerical error, correctable under Rule 36.” *Id.* at 10. (citation, quotation marks, and brackets omitted) (quoting *United States v. Quintero*, 572 F.3d 351, 353 (7th Cir. 2009). “This conclusion is reinforced by a 2009 amendment to Rule 32.2 ..., providing that the court must also include the forfeiture order, directly or by reference, in the judgment, but the court’s failure to do so may be corrected *at any time* under Rule 36.” *Id.* (citation, quotation mark, and brackets omitted; ellipses added; emphasis in original); see *Watson v. United States*, Nos. 3:01-CR-55, 3:08-CV-522, 3:01-CR-71, 3:08-CV-523, 2011 WL 4708804, 6 (E.D. Tenn. October 4, 2011) (stating the district court can include a forfeiture order in the Judgment at any time if it failed to do so previously).

The forfeiture order must be attached to or included in the Judgment. Fed. R. Crim. P. 32.2(b)(4)(B). The Judgment does not have the Final Order of Forfeiture attached to or included. This

1 failure was clerical error which can be, and is legally authorized to be, corrected under Fed. R. Crim. P.
2 32.2(b)(4)(B) and 36.

3 The United States requests the forfeiture order be attached to and included in the Judgment.

4 **III. CONCLUSION**

5 Based on the foregoing, this Court should attach the forfeiture order to a Judgment.

6 DATED this 4th day of June, 2015.

7 Respectfully submitted,

8 DANIEL G. BOGDEN
9 United States Attorney

10 /s/ Michael A. Humphreys
11 MICHAEL A. HUMPHREYS
12 Assistant United States Attorney

13 **IT IS SO ORDERED.**

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17 Gloria M. Navarro, Chief Judge
18 United States District Court

19 **DATED: 06/05/2015**
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